

United States Courts
Southern District of Texas

FILED

September 02, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Brownsville Division**

Nathan Ochsner, Clerk of Court

Tho Duc Huynh,

Petitioner,

v.

Warden, El Valle Detention Center;

Field Office Director, ICE Harlingen
Field Office;

Kristi Noem, *Secretary of Homeland
Security,*

Todd Lyons, *Acting Director, U.S.
Immigration and Customs Enforcement,*

Pamela Bondi, *Attorney General,*

Respondents.

Civ. Action No. 1:25-cv-156

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Tho Duc Huynh (“Mr. Huynh”) is a noncitizen who was ordered removed to his native Vietnam on October 5, 2004. A federal statute, 8 U.S.C. § 1231(a)(6), gives the government 180 days to effectuate such removal; yet over twenty years later, the government has failed to do so, and has failed to provide a date certain when such removal can be expected. On January 31, 2025, the government inexplicably and without forewarning arrested and re-detained Mr. Huynh, notwithstanding the lack of any articulable facts that removal would now suddenly become possible. Under such circumstances, continued detention violates the statute as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and Mr. Huynh must be released from custody on an Order of Supervision until such

time as a removal date is secured.

JURISDICTION AND VENUE

2. This action arises under the Immigration and Nationality Act of 1952 (“INA”), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

3. Venue is proper under 28 U.S.C. § 1391(e) because Petitioner is detained at the El Valle Detention Facility in Willacy County, within the Southern District of Texas. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973).

PARTIES

4. Tho Huynh, the Petitioner, is a citizen and native of Vietnam and has lived in United States since 1992. He has a final order of removal to Vietnam, and is currently detained by Respondents at the El Valle Detention Center in Los Fresnos, Texas.

5. The Warden of the El Valle Detention Center is the immediate physical custodian of Petitioner for purposes of a federal habeas petition. *Braden*, 410 U.S. at 494–95.

6. The Field Office Director of the Immigration and Customs Enforcement (“ICE”) Harlingen Field Office is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Mr. Huynh, including detentions, enforcement, and removal operations. He is the immediate legal custodian of Petitioner for purposes of a federal habeas petition. *Braden*, 410 U.S. at 494–95.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security

(“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

8. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

9. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and applications for relief from removal do so as her designees.

FACTUAL ALLEGATIONS

10. Mr. Huynh was born in 1969. He is a native and citizen of Vietnam.

11. Mr. Huynh entered the United States as a refugee in 1992. He later adjusted status as a lawful permanent resident in 1994.

12. Mr. Huynh has three U.S.-citizen children, and a U.S.-citizen partner. He owns and operates a business.

13. In 1997, Mr. Huynh was convicted of misdemeanor sexual battery under Virginia law. He was then charged as being removable for being convicted of an aggravated felony, and for being convicted of a crime involving moral turpitude within five years of admission as a permanent resident.

14. Mr. Huynh was ordered removed to Vietnam by an Immigration Judge (“IJ”) in Arlington, Va. on July 23, 2003. The Board of Immigration Appeals (“BIA”) affirmed the removal order on October 5, 2004, on which date it became administratively final.¹ Mr. Huynh did not appeal to the U.S. Court of Appeals for the Fourth Circuit.

15. Pursuant to 8 U.S.C. § 1231(a)(1), the government then sought to remove Mr.

¹ Ex. A, IJ decision and BIA decision.

Huynh to Vietnam, or to any other country on earth that would accept him from removal. Finding no country on earth to which it could remove Mr. Huynh, the government released him from custody on an Order of Supervision on June 4, 2007.²

16. Mr. Huynh's Order of Supervision placed strict conditions on his supervised release and required periodic check-ins with ICE. For the next two decades, Mr. Huynh faithfully abided by the conditions of his supervised release.

17. On January 31, 2025, at a periodic ICE check-in in Baltimore, Md., Respondents arrested and re-detained Mr. Huynh without any forewarning. Upon information and belief, Respondents lacked (and, to this day, still lack) any articulable basis to believe that Vietnam, or any other country on earth, will accept Mr. Huynh for removal.

18. Currently, Mr. Huynh is located at El Valle Detention Facility, where he remains detained today.³

19. Additionally, Mr. Huynh has been receiving ongoing treatment for hypertension, hyperlipidemia and cerebral aneurysm⁴ with a variety of medications⁵ for many years. He has a history of stroke and cerebral aneurysm, which was treated with a left craniotomy aneurysm clip in 2015.⁶ Furthermore, Mr. Huynh has been undergoing regular Botox treatments every three months for hemifacial spasm, a condition causing involuntary left-sided eye closure, hearing loss, and facial droop.⁷ His current detention is impeding access to this essential medical treatment. In recent months, Mr. Huynh has also required hospitalization and ongoing care due to severe headaches and a diagnosis of acquired pneumonia.⁸ As a result, his overall health has

² Ex. B, Form I-220B Order of Supervision and personal report record.

³ Ex. C, ICE Online Detainee Locator System.

⁴ Ex. D, Letter from Mr. Huynh's Doctor, Stephan Nguyen.

⁵ Ex. E, Mr. Huynh's Medication List.

⁶ Ex. F, Mr. Huynh's Discharge Paperwork from Johns Hopkins.

⁷ Ex. G, Letter from Mr. Huynh's Doctor, Army R. Stone, Neurology Center of Fairfax.

⁸ Ex. H, Mr. Huynh's Medical Report.

been significantly compromised. Respondents are aware of these medical conditions.

20. On April 16, 2025, ICE issued a Decision to Continue Detention.⁹ ICE declined to release Mr. Hyunh from detention, citing two reasons:

As explained below, after such review, ICE has determined to maintain your custody because:

- Pose a significant risk of flight pending your removal from the United States.
- ICE has the necessary means to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest.

ICE has made such determination based upon: ICE has the necessary means to obtain a travel document to effectuate removal and removal is likely and reasonably foreseeable. Your illegal entry into the United States shows a disregard to laws and indicates that you are a flight risk.

21. Mr. Hyunh never entered the United States illegally, rather he was properly admitted as a refugee from Vietnam. This statement is false.

22. ICE does not state any factual basis for its statement that “ICE has the necessary means to obtain a travel document to effectuate removal,” and such statement is also false.

23. Mr. Huynh remains in immigration custody, and ICE has so far not been able to secure a travel document or remove Mr. Huynh to Vietnam. Furthermore, ICE has not provided a date by which it believes it can deport Mr. Huynh or any other indication that it believes removal will occur within the foreseeable future.

24. Mr. Huynh is a class member of the *Trinh v. Homan* class, Civ. No. 8:18-cv-316CJC-GJS (C.D. Cal., Oct. 7, 2021), since he arrived in the United States before July 12, 1995, and is subject to a final order of removal. Pursuant to the *Trinh* settlement agreement, the policy of ICE is that “pre-1995 Vietnamese immigrants are not likely to be removed in the reasonably foreseeable future,” and therefore shall generally be released within 90 days after the entry of their final orders of removal. *Id.* at Dkt. 161, p.3. The *Trinh* settlement is still in effect

⁹ Ex. I, ICE Decision to Continue Detention.

and will not expire until October 2026.

25. ICE has not made any efforts to remove Mr. Huyhn to any country other than Vietnam, because there are no articulable facts that would cause ICE to believe that he is removable to any country other than Vietnam. He possesses no claim to citizenship or residence in any other country, and there is no third country on earth generally willing to accept non-nationals for deportation from the United States (especially not those with criminal convictions like that of Mr. Huyhn).

26. On April 30, 2025, Mr. Huynh applied to the BIA to reopen his final removal order. The BIA denied that motion on May 16, 2025.

27. On June 2, 2025, Mr. Huynh appealed the BIA decision denying his Motion to Reopen to the U.S. Court of Appeals for the Fourth Circuit. *See Huynh v. Bondi*, No. 25-1619 (4th Cir., filed June 2, 2025).

28. Finally, on June 26, 2025, the U.S. Court of Appeals for the Fourth Circuit entered a stay of removal, prohibiting Mr. Huyhn's removal pending his appeal to that Court.¹⁰ *Id.* at Dkt. No. 19.

LEGAL BACKGROUND

29. 8 U.S.C. §1231(a) permits DHS-ICE to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). In this case, pursuant to 8 U.S.C. § 1231(a)(2)(B)(i), the removal period began when Mr. Huynh's removal order became administratively final, October 5, 2004. The "removal period" therefore expired on January 3, 2005.

¹⁰ Ex. J, Order, U.S. Court of Appeals for the Fourth Circuit.

30. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that ICE shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be “released” if “subject to the terms of supervision” set forth in 8 U.S.C. § 1231(a)(3).

31. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 (“But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”)

32. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

33. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because “the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring

about that alien's removal." *See id.* at 689.

34. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

35. Where a petitioner has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701. Due deference is owed to the government's assessment of the likelihood of removal and the time it will take to execute removal. *Id.* at 700. However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government's burden.

36. The government may only rebut a detainee's showing that there is no significant likelihood of removal in the reasonably foreseeable future with "evidence of progress...in negotiating a petitioner's repatriation." *Gebrelibanos v. Wolf*, No. 20-cv-1575-WQH-RBB, 2020 U.S. Dist. LEXIS 185302, at *9 (S.D. Cal., Oct. 6, 2020) (citing *Kim v. Ashcroft*, 02cv1524-J(LAB) (S.D. Cal., June 2, 2003), ECF No. 25 at 8 (citing *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)); *see also Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 U.S. Dist. LEXIS 248926, at *5 (S.D. Miss., Dec. 16, 2020) (granting petitioner's habeas claim because the government failed to show that removal would be imminent after obtaining a travel document and failing to remove

petitioner within the document's validity period) (emphasis added).

37. Factors courts consider in analyzing the likelihood of removal include “the existence of repatriation agreements with the target country, the target country’s prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien.” *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y., Jan. 2, 2019) (citing *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436-37 (S.D.N.Y. 2017)); *see also Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003).

38. Other courts have denied habeas petitions primarily where the U.S. government has already procured petitioner’s travel documents and only travel arrangements are outstanding, which is not the case here. *See Berhe*, 2019 WL 3734110 at *4 (denying Petitioner’s habeas petition because “Eritrea has issued a travel document and Petitioner has presented no evidence to suggest there are other barriers to his removal”); *Tekleweini-Weldemichael v. Book*, No. 1:20-CV- 660-P, 2020 WL 5988894, at *5 (W.D. La., Sept. 9, 2020), *report and recommendation adopted*, No. 1:20-CV-660-P, 2020 WL 5985923 (W.D. La., Oct. 8, 2020) (denying without prejudice Petitioner’s habeas petition because he possessed a travel document valid through December 19, 2020, and noting that he is not precluded from filing a new petition upon the expiration or cancellation of his travel document).

39. In this case, DHS-ICE has not provided Mr. Huynh with any information regarding efforts to obtain a travel document from Vietnam. Moreover, DHS-ICE has not shown any meaningful progress in doing so. This is insufficient evidence for the government to meet its burden that there is a significant likelihood of removal in the reasonably foreseeable future. *See Gebrelibanos*, 2020 WL 5929487, at *3; *Tekleweini-Weldemichael*, 2020 WL 5988894 (finding significant likelihood of removal in reasonably foreseeable future *only because* government had

already obtained a valid travel document).

40. Mr. Huynh's removal period pursuant to 8 U.S.C. § 1231(a)(1)(A), and his presumptively reasonable post-removal period pursuant to 8 U.S.C. § 1231(a)(6), expired decades ago. With neither a travel document nor an indication from Vietnam that one is soon to be forthcoming, detention is unreasonable, as removal is not imminent.

41. In addition, federal regulations dictate that where ICE detains an individual under 8 U.S.C. § 1231(a)(6), an individualized determination must be carried out, with the following criteria taken into account:

- (1) The nature and number of disciplinary infractions or incident reports received when incarcerated or while in Service custody;
- (2) The detainee's criminal conduct and criminal convictions, including consideration of the nature and severity of the alien's convictions, sentences imposed and time actually served, probation and criminal parole history, evidence of recidivism, and other criminal history;
- (3) Any available psychiatric and psychological reports pertaining to the detainee's mental health;
- (4) Evidence of rehabilitation including institutional progress relating to participation in work, educational, and vocational programs, where available;
- (5) Favorable factors, including ties to the United States such as the number of close relatives residing here lawfully;
- (6) Prior immigration violations and history;
- (7) The likelihood that the alien is a significant flight risk or may abscond to avoid removal, including history of escapes, failures to appear for immigration or other proceedings, absence without leave from any halfway house or sponsorship program, and other defaults; and
- (8) Any other information that is probative of whether the alien is likely to—
 - (i) Adjust to life in a community,
 - (ii) Engage in future acts of violence,
 - (iii) Engage in future criminal activity,

(iv) Pose a danger to the safety of himself or herself or to other persons or to property, or

(v) Violate the conditions of his or her release from immigration custody pending removal from the United States.

8 C.F.R. § 241.4(f).

42. In this case, DHS-ICE's Post-Order Custody Review decisions denying release did not take these factors into account, and instead issued a pro forma, rubber-stamp decision justifying Petitioner's continued detention.

43. Finally, Petitioner's Order of Supervision was revoked by an individual who lacked regulatory authority to do so, and without observance of required regulations. 8 C.F.R. § 241.4(l).

**FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(a)(6)**

44. Mr. Huynh re-alleges and incorporates by reference the preceding paragraphs 1-43.

45. Mr. Huynh's continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Mr. Huynh's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have passed decades ago, and no significant likelihood of removal exists in the reasonably foreseeable future.

46. Under *Zadvydas*, the continued detention of someone like Mr. Huynh is unreasonable and not authorized by 8 U.S.C. § 1231.

**SECOND CLAIM FOR RELIEF:
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution**

47. Mr. Huynh re-alleges and incorporates by reference the preceding paragraphs 1-43.

48. Mr. Huynh's detention during the removal period is only constitutionally

permissible when there is a significant likelihood of removal in the reasonably foreseeable future. In Mr. Huynh's case, Vietnam has not issued any travel documents for his removal; he has also not been recognized as a national of any other country. These factors lend support to the conclusion that there is no likelihood of Mr. Huynh's removal in the reasonably foreseeable future. Respondents continue to detain Mr. Huynh without evidence that Vietnam will ultimately issue a travel document and with no reason to believe that they will obtain a travel document within a reasonable amount of time. No significant likelihood of removal exists in the reasonably foreseeable future.

49. Respondents' detention of Mr. Huynh no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

**THIRD CLAIM FOR RELIEF:
Violation of Regulations**

50. Mr. Huynh re-alleges and incorporates by reference the preceding paragraphs 1-43.

51. As set forth above, Respondents continue to detain Mr. Huynh in violation of 8 C.F.R. § 241.4, having not considered the substantive factors set forth in subsections (e) and (f) of that regulation. Were such factors to be properly weighed, it would be apparent that Mr. Huynh is a candidate for release on an Order of Supervision pending removal.

52. Likewise, Respondents continue to detain Mr. Huynh in violation of 8 C.F.R. §§ 241.4 and 241.13, since the proper procedures set forth in those regulations have not been carried out.

53. Finally, Respondents' actions in revoking Petitioner's Order of Supervision and re-arresting Petitioner without any advance or contemporaneous explanation of the legal or factual basis for re-detention violated 8 C.F.R. § 241.4(l), a regulation designed to protect the due process rights of noncitizens like Petitioner and – as this regulation pertains to continued

detention, conditions for release, and revocation of release –directly impacting Petitioner’s individual liberty interest. Respondents had no legal basis to revoke Petitioner’s Order of Supervision or re-arrest Petitioner. Respondents failed to comply with their own rules when they revoked Petitioner’s Order of Supervision and re-detained him. The Notice of Revocation should be vacated, and the Order of Supervision restored.

PRAYER FOR RELIEF

54. Mr. Huynh respectfully requests that this Court assume jurisdiction over this matter and enter an order:

- a) Declaring that Mr. Huynh’s continued detention violates his due process rights;
- b) Granting the writ of habeas corpus and order Respondents to release Mr. Huynh from detention forthwith, on an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3);
- c) Restoring Mr. Huynh’s former Order of Supervision; and
- d) Granting any other relief that this Court deems just and proper.

Respectfully submitted,

Date: August 28, 2025

//s// Simon Sandoval-Moshenberg
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Certificate of Service

I, Simon Sandoval-Moshenberg, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

Respectfully submitted,

Date: August 28, 2025

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